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No. 89

In the Supreme Court of the United States

OCTOBER TERM, 1951

SUSANNE THOMAS RICHARDS, ET AL., PETITIONERS

v.

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 59

SUZANNE THOMAS RICHARDS, ET AL., PETITIONERS

v.

UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 20–22) is unreported. The opinion of the court of appeals (R. 39–46) is reported at 285 F. 2d 521.

JURISDICTION

The judgment of the court of appeals was entered on November 25, 1960 (R. 47). The petition for a writ of certiorari was filed on February 21, 1961, and was granted on May 8, 1961 (R. 48; 366 U.S. 916). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether in an action under the Federal Tort Claims Act for wrongful death occurring in one State as a result of alleged negligence in another State the liability of the United States is to be determined in accordance with the internal law of the place of injury, the internal "law of the place where the act or omission occurred," or in accordance with the entire substantive law of the latter place, including its conflict-of-laws principles.

2. Whether the courts below were correct in holding that petitioners' complaints do not state claims upon which relief can be granted.

STATUTES INVOLVED

The pertinent provisions of the Federal Tort Claims Act, the Oklahoma Wrongful Death Act, 12 Okla. Stat. Ann. 1053, and the Missouri Wrongful Death Act, Mo. Ann. Stat. 537.080–537.090, R.S., Secs. 3653–3654 (1939), are set forth in the Appendix, *infra*, pp. 29–32.

STATEMENT

The fourteen separate claims in the present case arose out of the crash of an American Airlines plane at Fort Leonard Wood, Missouri, on August 4, 1955 (R. 7, 20).[1] The crash occurred while the plane was en route from Springfield, Missouri, to St. Louis,

[1] Except as to parties and damages sought, the pleadings in all cases are identical insofar as they relate to the pertinent issues (R. 20). For that reason, only the pleadings in Civ. No. 4272 of the district court have been printed in the record and are cited in this brief.

Missouri, as a part of a regularly scheduled flight from Tulsa, Oklahoma, to New York City (R. 7).

Petitioners alleged in their complaints that the crash had resulted from the outbreak of a fire in one of the plane's engines, and that the fire had been "caused by the failure of * * * [a] defective and unairworthy cylinder" which had been installed in the plane at the American Airlines overhaul base at Tulsa, Oklahoma (R. 7). Petitioners further alleged that the reason why a defective cylinder had been installed was that American Airlines had "engaged in unsafe practices in repair, rebuilding, overhauling and inspection of its aircraft, aircraft engines and component parts * * *," and that the United States, through the Civil Aeronautics Administration, had "negligently failed to enforce the terms of the Civil Aeronautics Act and the regulations thereunder which prohibited the practices then being used by American Airlines, Inc., in the overhaul depot of Tulsa, Oklahoma" (R. 6).

As the survivors or legal representatives of passengers and crew of the American Airlines' plane (R. 1–4), petitioners instituted their actions against the United States under the Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), App., *infra*, p. 29) (R. 5). Although petitioners in each case had already received from American Airlines $15,000, the maximum amount then recoverable under the Missouri Wrongful Death Act (Mo. Ann. Stat. 537.090, R.S., Sec. 3654 (1939), App., *infra*, pp. 31–32) (R. 30–33),

they sought in their complaints additional amounts from the United States under the Oklahoma Wrongful Death Statute (12 Okla. Stat. Ann. 1053 (Supp. 1960), App., *infra*, pp. 30–31) (R. 5, 8). The United States filed third-party complaints against American Airlines, seeking reimbursement for any amount which petitioners might recover against the United States (R. 11–13).

After a pretrial hearing, the district court held that petitioners' complaints failed to state claims upon which relief could be granted under the Oklahoma Wrongful Death Act, since that statute did not apply "where an act or omission occurring in Oklahoma results in injury and death in the State of Missouri" (R. 21). The court then noted that, "[i]f Oklahoma law is applicable under the Federal Tort Claims Act, then the general law of Oklahoma, including its conflicts of law rule, is applicable thereunder," and that in this case the conflicts rule would refer the court to the Missouri Wrongful Death Act (R. 22). But, as to the Missouri statute, the court held that there was no claim upon which relief could be granted because the petitioners, by accepting $15,000 each from American Airlines, "have already received full satisfaction of any claims they might have thereunder" (R. 22). The court thereupon entered judgment dismissing petitioners' complaints with prejudice, and, because of its disposition, found it unnecessary to pass upon the third-party complaints.

The court of appeals, Chief Judge Murrah dissenting (R. 45–46), pointed out (R. 42) that, "in a case in which the act or omission occurs at one place and the resulting death at another," the Federal Tort Claims

Act equates "the liability of the Government with that of a private litigant under the substantive law of the state where the act or omission of the employee of the Government occurred"—in this case, the law of Oklahoma—and that the *substantive* law of that state included the conflict-of-laws rules as well. The court thereupon affirmed, reasoning in much the same manner as the district court that the complaints had failed to state claims upon which relief could be granted under either the Oklahoma or Missouri Wrongful Death Act (see R. 43, 44).

SUMMARY OF ARGUMENT

I

The parties in the present case, as well as five circuits, are in a three-way conflict as to which law is to be applied to determine the liability of the United States in a suit under the Federal Tort Claims Act. The government contends that the explicit language of Section 1346(b) of the Act requires that the liability of the United States be determined "in accordance with the law of the place where the act or omission occurred," and that Congress meant what it said when it used that language. To decide which law governs under the literal language of the statute, however, does not decide what the specific content of that law should be. Since Section 2674 of the Act provides that "[t]he United States shall be liable * * * in the same manner and to the same extent as a private individual under like circumstances," the government believes that Section 1346(b) should be interpreted to refer to the entire substantive law,

including the conflict-of-laws principles, of the place where the act or omission occurred, for this is precisely what a federal district court, under its diversity-of-citizenship jurisdiction, would do with respect to a private litigant.

The legislative history of the Federal Tort Claims Act supports this position. The history makes clear that Congress made a deliberate choice of language in Section 1346(b). Moreover, although the history shows that Congress apparently never considered the conflict-of-laws problem created by multi-state torts, Congress did specifically indicate that it was not creating a separate system of federal tort liability, but rather that it was setting up a system by which the United States would be subjected to tort liability under existing local or state law, *i.e.*, under circumstances that would bring private liability into existence. Finally, the history makes clear that both Section 1346(b) and Section 2674 are to be read *in pari materia* so that the United States is to be held liable under the Act "in the same manner and to the same extent as a private individual under like circumstances" "in accordance with the law of the place where the act or omission occurred."

II

Petitioners' interpretation of the Act, that the liability of the United States should be determined in accordance with the internal law of the place where the act or omission occurred, ignores the requirement of Section 2674 that the United States is to be liable "in the same manner and to the same extent as a

private individual under like circumstances," for, under a federal district court's diversity-of-citizenship jurisdiction, the liability of a private individual would be determined in accordance with the whole law of the forum. Petitioners argue that the internal law of the place where the negligent act occurred should be given extra-territorial effect in order that it not impinge upon petitioners' claims created by federal law. But it is clear from the legislative history of the Act that Congress never intended to create a separate system of federal tort liability different from the liability existing under state law.

Respondent American Airlines' interpretation of the Act, that the liability of the United States should be determined in accordance with the internal law of the place of injury, completely ignores the specific language of Section 1346(b) that the liability of the United States is to be determined "in accordance with the law of the place where the act or omission occurred." Moreover, if the place where the act or omission occurred were to give extra-territorial effect to its law governing liability of a private individual, the airline's interpretation of the Act would not satisfy the requirements of Section 2674.

III

The practical effect of the government's position in the present case is that, under the entire substantive law of Oklahoma, "the place where the act or omission occurred," petitioners are allowed to assert their claims under the law of the place where the injury occurred—in this case, the Missouri Wrongful Death

Act. But, since petitioners have already received $15,000 each from American Airlines, the maximum recovery allowable under the Missouri statute, they have already received full satisfaction of their legal claims under the Missouri statute. Moreover, Oklahoma provides no alternative conflict-of-laws rule by which it gives extra-territorial effect to its own Wrongful Death Act in cases in which the negligent act occurs within its own borders even though the injury which causes death occurs outside the state. Petitioners have therefore failed to state claims upon which relief could be granted.

ARGUMENT

I

SECTION 1346(b) OF THE FEDERAL TORT CLAIMS ACT MUST BE INTERPRETED TO REQUIRE THAT THE LIABILITY OF THE UNITED STATES BE DETERMINED IN ACCORDANCE WITH THE ENTIRE SUBSTANTIVE LAW—INCLUDING THE CONFLICT-OF-LAWS PRINCIPLES—"OF THE PLACE WHERE THE ACT OR OMISSION OCCURRED" IN ORDER TO SATISFY THE REQUIREMENT OF SECTION 2674 THAT THE UNITED STATES BE LIABLE "IN THE SAME MANNER AND TO THE SAME EXTENT AS A PRIVATE INDIVIDUAL UNDER LIKE CIRCUMSTANCES"

Section 1346(b) of the Federal Tort Claims Act (28 U.S.C. 1346(b), App., *infra*, p. 29) waives the sovereign immunity of the United States with respect to suit for a "negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person,

would be liable to the claimant in accordance with the law of the place where the act or omission occurred." All parties agree[2] that, under the language of Section 1346(b), the liability of the United States in a tort claims action must be determined "in accordance with the law of the place where the act or omission occurred." They part company, however, in defining what the content of that law shall be.

The government contends that Section 1346(b) must be interpreted as referring to the entire substantive law, including the conflict-of-laws principles, of the place where the act or omission occurred—in this case, the entire law of Oklahoma. Both the Tenth Circuit in the present case (R. 39–45) and the Second Circuit in *Landon* v. *United States,* 197 F. 2d 128, 131, adhered to this interpretation of Section 1346(b). American Airlines also argues this position in the alternative (Resp. Br. 10–11).

Petitioners, on the other hand, contend that Section 1346(b) specifically refers to the internal law of the place where the act or omission occurred—in this case, the internal law of Oklahoma (Pet. Br. 12, 25–28). They are supported in their position by the District of Columbia Circuit in *Eastern Airlines, Inc.* v. *Union Trust Co.,* 221 F. 2d 62, 80, certiorari denied *sub nom. Union Trust Co.* v. *United States,* 350 U.S. 911; by the Seventh Circuit in *Voytas* v. *United States,* 256 U.S. 786, 788–790; by Judge Frank of the Second Circuit, dissenting in *Landon* v. *United States,*

[2]Albeit American Airlines argues this position only in the alternative (see Resp. Br. 10–11).

supra, 197 F. 2d at 132; and by Chief Judge Murrah of the Tenth Circuit, dissenting in the present case (R. 45–46).

Finally, American Airlines, arguing in the alternative (see Resp. Br. 8–11), interprets Section 1346 (b) as referring to the law of the place where the "damage, injury, or death occurred" (Resp. Br. 9), *i.e.*, the law of the place where the act or omission had its operative effect—in this case, the internal law of Missouri. This interpretation is supported by the Ninth Circuit in *United States* v. *Marshall*, 230 F. 2d 183, 187, and by Judge Miller of the District of Columbia Circuit, dissenting in *Eastern Airlines, Inc.* v. *Union Trust Co.*, *supra*, 221 F. 2d at 80–81.

A. THE GOVERNMENT'S POSITION IS SUPPORTED BY THE LANGUAGE OF THE FEDERAL TORT CLAIMS ACT

1. The explicit language of Section 1346(b) requires that the liability of the United States be determined "in accordance with the law of the place where the act or omission occurred." The language employed is unequivocal. Congress could hardly have used any more precise language than it did in Section 1346(b). Nor did Congress confine the place of conduct language to Section 1346(b) alone. The same language is also used in other sections of the Tort Claims Act. Thus, Section 2672 (28 U.S.C. 2672, App., *infra*, pp. 29–30) authorizes administrative adjustments of certain claims "under circumstances where the United States * * * would be liable * * * in accordance with the law of the place where the act or omission occurred."

Section 2674 (28 U.S.C. 2674, App., infra, p. 30) prohibits the award of punitive damages even though "the law of the place where the act or omission complained of occurred provides * * *" punitive damages. Section 1402(b) (28 U.S.C. 1402(b), App., *infra*, p. 29) provides that a tort claims action may be brought "only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred." See also 28 U.S.C. 2675, 2676, 2680(a), 2680(b). Since it has long been a rule of statutory construction that, as a first reference, the most authoritative guide to the legislative purpose of a statute is the spontaneous and literal meaning of the language employed (see *Flora* v. *United States*, 357 U.S. 63, 65; *Osaka Shosen Kaisha Line* v. *United States*, 300 U.S. 98, 101), the government can only agree with petitioners (Pet. Br. 15) that the "deliberate and consistent use of the same language throughout the Act can be squared only with the conclusion that Congress meant exactly what it said when it directed that the liability of the Government should be measured by the law of the place where the negligent act or omission of its employee occurred."

2. To decide which law governs the liability of the government under the literal language of the statute, however, does not decide what the specific content of that law should be. The government believes that Section 1346(b) should be interpreted to refer to the entire substantive law, including the conflict-of-laws principles, of the place where the negligent act oc-

curred.[8] Support for this position is found in the language of Section 2674 of the Act, which provides that "the United States shall be liable * * * in the same manner and to the same extent as a private individual under like circumstances." As this Court stated in *Rayonier, Inc.* v. *United States*, 352 U.S. 315, 319: "[T]he test established by the Tort Claims Act for determining the United States' liability is whether a private person would be responsible for similar negligence under the law of the State where the acts occurred." Thus, had the United States and American Airlines been sued in Oklahoma as joint tortfeasors, jurisdiction over the airline would have been based on diversity of citizenship (see 28 U.S.C. 1332), and jurisdiction over the United States would have been based on Section 1346(b) of the Tort Claims Act.

[8] The government's present position is a development of the position which it took in this Court in the *Union Trust Co.* case, *supra*. In that case the issue presented by the petition to this Court was whether the liability of the United States was to be determined by the *internal* law of the place where the act or omission occurred or by the *internal* law of the place where the injuries and deaths occurred. The government there took the same position it takes here as a starting point, namely, that the explicit language of Section 1346(b) requires that the liability of the United States be determined "in accordance with the law of the place where the act or omission occurred." Since the petition did not present the more refined issue whether it was the internal law or the entire substantive law which was to govern the liability of the United States, the government was not required to make any further elaboration or development of its position. In the present case, however, the precise issue, whether Section 1346(b) refers to the internal law or the entire substantive law, has been raised explicitly.

The court would have been required to determine the airline's liability, damages, and other questions in accordance with the entire substantive law of Oklahoma, the forum state, including its conflict-of-laws principles. See *Klaxon Co.* v. *Stentor Electric Mfg. Co.*, 313 U.S. 478; *Erie R.R.* v. *Tompkins*, 304 U.S. 64. In order to determine the liability of the United States "in the same manner and to the same extent as a private individual under like circumstances," the court would have been required to look in the first instance, not to the internal law of Missouri, the place where the negligent act had its operative effect, and not to the internal law of Oklahoma, the place where the act occurred, but rather to Oklahoma's entire substantive law, including its conflict-of-law principles. Thus, as this Court stated in *Hess* v. *United States*, 361 U.S. 314, 318, n. 7: "[T]he term 'place' in the Federal Tort Claims Act means the political entity * * * whose laws shall govern the action against the United States 'in the same manner and to the same extent as a private individual under like circumstances.'"

B. THE GOVERNMENT'S POSITION IS ALSO SUPPORTED BY THE LEGISLATIVE HISTORY OF THE FEDERAL TORT CLAIMS ACT

1. It is clear from the legislative history that Congress made a deliberate choice of language in Section 1346(b), adopting the "law of the place where the act or omission occurred" and *not* the law of the place of injury.

The Federal Tort Claims Act was passed by the Seventy-Ninth Congress in 1946 after "some twenty-eight years of congressional drafting and redrafting,

amendment and counter-amendment." *United States v. Spelar*, 338 U.S. 217, 219–220. Most of the earlier tort claims bills proposed systems of compensation for personal injury or death to be administered by an employees' compensation commission.[4] Because these bills set up detailed provisions to govern such matters as the effect to be given contributory negligence or intoxication, aggravation of the injury through failure to secure medical care, and the order of the distribution of death benefits,[5] they did not contain any reference to any other law by which the liability of the United States was to be determined.

During the First Session of the Seventy-Sixth Congress, the whole emphasis with respect to government tort liability changed. In place of the elaborate administrative procedures and remedies proposed in the previous tort claims bills, the new measures, H.R. 7236 and S. 2690, established a right of suit against the United States in the "Court of Claims and the district courts" for property damages, personal injury, or death "caused by the negligence or wrongful act or omission" of government employees (Section 201). Just as in the earlier tort claim bills, H.R. 7236 and S. 2690 contained provisions barring recovery for injuries caused by contributory negli-

[4] See, *e.g.*, H.R. 14737, 65th Cong., 3d Sess.; H.R. 62, 67th Cong., 1st Sess.; H.R. 8651, 69th Cong., 1st Sess.; S. 211, 72d Cong., 1st Sess.; S. 1043, 74th Cong., 1st Sess.

[5] See, *e.g.*, S. 1912, 69th Cong., 1st Sess., Secs. 201, 204, 205; H.R. 9285, 70th Cong., 1st Sess., Secs. 201, 204, 205; S. 4567, 72d Cong., 1st Sess., Secs. 201(b), 201(c), 203, 204; H.R. 129, 73d Cong., 1st Sess., Secs. 2(f), 2(g), 3(a), 4, 5; S. 1043, 74th Cong., 1st Sess., Secs. 201, 203, 204.

gence, intoxication or willful conduct, establishing the order of distribution of death benefits, and governing aggravation of damages (Sections 204, 302, 304). Because of the change of emphasis in these new bills, the need for a reference to some law by which the liability of the United States was to be governed became apparent. Congress presumably contemplated that the liability would be determined by "the law of the situs of the alleged tort" (Hearings on S. 2690 before a Subcommittee of the Senate Committee of the Judiciary, 76th Cong., 3d Sess., p. 44), but did not make any specific reference in the bills to the law governing liability. H.R. 7236, after a favorable report following hearings by the House Judiciary Committee (H. Rep. No. 2428, 76th Cong., 3d Sess.), was passed by the House (86 Cong. Rec. 12032), but the Senate did not consider it before the close of the session.

In the First Session of the Seventy-Seventh Congress, the tort claims bill was reintroduced in the House as H.R. 5373 in virtually the identical form in which it had passed the House as H.R. 7236 in the preceding Congress. Between the First and Second Sessions, the Department of Justice, in cooperation with other government agencies, the American Bar Association, and Congressman Celler, proposed a revision of H.R. 5373 that was introduced in the House as H.R. 6463. See Hearings on H.R. 5373 and H.R. 6463 before the House Committee on the Judiciary, 77th Cong., 2d Sess., pp. 1, 40–42. This revision, which was substantially adopted by the Committee, provided for the first time that the liability

of the United States was to be determined "in accordance with the law of the place where the act or omission occurred" (Section 301).

In discussing the revised bill, H.R. 6463, the draftsmen explained that the bill closely followed the pattern set out in H.R. 5373, 77th Cong., 1st Sess., and H.R. 7236, 76th Cong., 1st Sess., but "with two important exceptions." The first exception was that H.R. 6463 vested "exclusive jurisdiction in the district courts" instead of concurrent jurisdiction with the Court of Claims, because a district court "sits in only one State and is familiar with the local laws and decisions that are made pertinent to the determination of tort claims against the United States * * *." Hearings on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess., *supra*, p. 42. The second major exception noted was that H.R. 6463 subjected (*id.*, p. 43 (emphasis added))

> the determination of the validity of the claim, the defenses thereto, and the distribution of the recovery, to *the law of the place where the delinquent act or omission occurred.* H.R. 7236 and H.R. 5373 *may*, as a matter of law, *have embodied the first of these requirements* to some extent, but the present bill states this explicitly, and leaves to the *local law* the determination of certain matters specifically treated in H.R. 7236 and H.R. 5373, such as the beneficiaries entitled to recovery in death cases, the defense of contributory negligence, and the like. * * *

S. 2221, 77th Cong., 2d Sess., the companion measure to H.R. 6463, was reported favorably by the

Senate Committee of the Judiciary (S. Rep. No. 1196, 77th Cong., 2d Sess.), and was then passed by the Senate (88 Cong. Rec. 3174, 3175). It was subsequently referred to the House Committee on the Judiciary which reported the bill favorably (H. Rep. No. 2245, 77th Cong., 2d Sess.), but it was never considered by the House. The bill, as revised by the Seventy-Seventh Congress, was subsequently reintroduced without substantial modification or further hearings in the Seventy-Eighth Congress (H.R. 1356, S. 1114, 78th Cong., 1st Sess.), without any action taken, and finally in the Seventy-Ninth Congress (H.R. 181, 79th Cong., 1st Sess.), where it was reported favorably (H. Rep. No. 1287, 79th Cong., 1st Sess.), and was finally passed as Title IV of the Legislative Reorganization Act of 1946, 60 Stat. 842. See *United States* v. *Spelar, supra,* 338 U.S. at 220, n. 9. Thus, the language with respect to the law governing liability, which first appeared in Section 301 of H.R. 6463, 77th Cong., 2d Sess., was kept intact in every subsequent tort claims bill and was ultimately embodied in the present Federal Tort Claims Act as Section 1346(b).

2. It is also clear from the legislative history of the Tort Claims Act that Congress never considered the conflict-of-laws problems created by multi-state torts. This conclusion is confirmed by the Court's observation in *Dalehite* v. *United States,* 346 U.S. 15, 28, that "[u]ppermost in the collective mind of Congress were the ordinary common-law torts. Of these, the example which is reiterated in the course of the repeated proposals for submitting the United States

to tort liability is 'negligence in the operation of vehicles.'" And a perusal of the legislative history cited by the Court (*id.* at 28, n. 20) in fact indicates that the Congress discussed only cases involving accidents caused by the negligent driving of postal trucks, military vehicles, vehicles of the Civilian Conservation Corps, or the like,[6] which of course rarely give rise to any conflict-of-laws problem.

Since, in cases involving single-state torts, the place of the negligent act or omission, the place of the accident, and the place of the resultant injury or death are one and the same, it makes little difference whether a court interprets Section 1346(b) literally or interprets that section to require the imposition of liability on the United States in accordance with the law of the place where the accident, injury or death occurred; under either interpretation no conflict-of-laws problem arises. See, *e.g.*, *Olson* v. *United States*, 175 F. 2d 510, 512 (C.A. 8); *Alaniz* v. *United States*, 257 F. 2d 108, 110 (C.A. 10). Thus, throughout the lengthy history of the act, the term "law of the place where the act or omission occurred" was considered virtually synonymous with (1) "the law of the situs of the wrongful act or omission"[7]; (2) "local

[6] See Hearings on S. 2690, 76th Cong., 3d Sess., *supra*, p. 9; Hearings on H.R. 7236 before Subcommittee No. 1 of the House Committee of the Judiciary, 76th Cong., 3d Sess., pp. 7, 16; Hearings on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess., *supra*, pp. 9, 12, 20, 33, 66. See also H. Rep. No. 2428, 76th Cong., 3d Sess., p. 3; 69 Cong. Rec. 2192, 2193, 3118; 86 Cong. Rec. 12024.

[7] Hearings on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess., *supra*, p. 35; see *id.*, p. 43.

law"[8]; (3) "local tort law"[9]; (4) "the law of the situs of the alleged tort"[10]; (5) "the locale of the injury or damage"[11]; and even (6) "the law of the state where the death occurred."[12] The reason for this seeming disparity of language was no doubt that Congress concerned itself exclusively with single-state torts. Nevertheless, Congress made a deliberate choice of language in Section 1346(b) itself, adopting the "law of the place where the act or omission occurred."

3. Although Congress did not consider the problems arising out of multi-state torts, it did make clear that it was not creating a separate system of federal tort liability, as had been provided in the original tort claims bills (see *supra*, pp. 14–15); rather, it was setting up a means by which the United States would be subjected to tort liability under existing local and state law, *i.e.*, "under circumstances that would bring private liability into existence." *Feres* v. *United States*, 340 U.S. 135, 141.

Once the emphasis with respect to government tort liability changed in the First Session of the Seventy-

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[8] *Id.*, pp. 26, 27, 30, 43, 59, 61; S. Rep. No. 1196, 77th Cong., 2d Sess., p. 6; H. Rep. No. 2245, 77th Cong., 2d Sess., p. 9; H. Rep. No. 1287, 79th Cong., 1st Sess., p. 4; S. Rep. No. 1400, 79th Cong., 2d Sess., p. 32.

[9] Hearings on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess., *supra*, p. 30.

[10] Hearings on S. 2690, 76th Cong., 3d Sess., *supra*, p. 44; see Hearings on H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess., *supra*, p. 43.

[11] *Id.*, p. 9.

[12] H. Rep. No. 748, 80th Cong., 1st Sess., p. 1; S. Rep. No. 763, 80th Cong., 1st Sess., p. 2.

sixth Congress from a system of elaborate administrative procedures and remedies to a system by which the United States would be subject to suit in the Court of Claims and the district courts (see *supra*, p. 14), the proposed bills embodied a provision, in the exact terms of present Section 2674, making the liability of the United States equivalent to the liability of a private individual, "subject to the provisions of this Act." H.R. 7236, 76th Cong., 1st Sess., Sec. 201; S. 2690, 76th Cong., 1st Sess., Sec. 201. This provision was kept intact in every subsequent tort claims bill and was ultimately enacted into law as Section 410 of the Legislative Reorganization Act of 1946, 60 Stat. 843.

As originally enacted, the provision in the present Section 2674, that "the United States shall be liable * * * in the same manner and to the same extent as a private individual under like circumstances," was made "[s]ubject to the provisions of this title," just as that provision had been made "subject to the provisions of this Act" for the first time in the tort claims bills introduced during the First Session of the Seventy-Sixth Congress. Since one of the provisions of the title was the provision, in present Section 1346 (b), that the liability of the United States was to be determined "in accordance with the law of the place where the act or omission occurred," both Section 2674 and Section 1346(b) were to be read *in pari materia*.

The clause, "[s]ubject to the provisions of this title," was deleted in the 1948 revision of the Federal Judicial Code. But the deletion was made solely for

the sake of phraseology, in pursuance of the policy of eliminating superfluous language, a policy which was followed throughout the code revision and which was not intended to effect any substantive change in the statute. See Reviser's Notes following 28 U.S.C. 2674; H. Rep. No. 308, 80th Cong., 1st Sess., pp. 5, 7; *United States* v. *John Hancock Mut. Life Ins. Co.*, 364 U.S. 301, 308–309.

Once Sections 2674 and 1346(b) are read *in pari materia*, it becomes clear that one of the basic purposes of the Act was to make "the United States * * * liable * * * in the same manner and to the same extent as a private individual under like circumstances" "in accordance with the law of the place where the act or omission occurred," and that the only way by which the purpose may be accomplished is to interpret Section 1346(b) as requiring that the liability be determined in accordance with the entire substantive law, including the conflict-of-laws principles, "of the place where the act or omission occurred."

II

THE PURPOSES OF THE FEDERAL TORT CLAIMS ACT WOULD NOT BE ACCOMPLISHED IF SECTION 1346(b) WERE INTERPRETED TO REQUIRE THAT THE LIABILITY OF THE UNITED STATES BE DETERMINED IN ACCORDANCE WITH EITHER THE INTERNAL LAW OF THE PLACE WHERE THE ACT OR OMISSION OCCURRED OR THE INTERNAL LAW OF THE PLACE WHERE THE INJURY OCCURRED

1. Petitioners' interpretation of the Act, that the liability of the United States should be determined in accordance with the *internal* law of the place where the act or omission occurred, ignores the requirement

of Section 2674 that the United States is to be liable "in the same manner and to the same extent as a private individual under like circumstances."[11] Had the United States and American Airlines been sued as joint tortfeasors in a federal district court in Oklahoma, the airline's liability would have been determined by Oklahoma's entire substantive law, including its conflict-of-laws principles, according to the well-known rule in diversity-of-citizenship cases established in the *Erie* and *Klaxon* cases, *supra*, whereas, under petitioner's theory, the liability of the United States would have been determined only by the internal law of Oklahoma.

Petitioners' position also presents another difficulty. Since the accident occurred in Missouri, the internal law of Oklahoma (the place where the negligent act occurred) would have to be given extra-territorial effect for petitioners to have recovery. But the Oklahoma courts have interpreted that state's own law as not having any extra-territorial effect (see *infra*, pp. 26–27). Petitioners therefore argue (Pet. Br. 29–33) that the territorial limitations on Oklahoma law should not be allowed to impinge upon their claims created by federal law. But as the legislative history

[11] Petitioners answer that "the Act itself clearly dictates that the remedy shall not, in every instance, be coextensive with that available against a private person" (Pet. Br. 20), and then present an illustration of "a few of the differences between a claimant's right to relief against the United States under the Act and his right to relief against a private individual under like circumstances * * *" (Pet. Br. 20, n. 20). But, as respondent American Airlines states (Resp. Br. 5): "The list of exceptions contains no direct or indirect modification to existing principles of conflicts of law."

of the Act indicates (see *supra*, pp. 16–17, 19), Congress never intended to create a separate system of federal tort liability different from the liability under existing state law. Furthermore, in wrongful death actions, this Court has always given effect to the limitations of liability imposed by the law which creates the cause of action. See, *e.g.*, *Slater* v. *Mexican National R.R.*, 194 U.S. 120, 126.

2. Respondent American Airlines contends that the liability of the United States should be determined in accordance with the internal law of the place of the injury, *i.e.*, the law of the place where the negligent act had its operative effect, because this is the normal conflict-of-laws rule. See Restatement, Conflict of Laws, Sec. 377 (1934). The airline further contends that, since, in a suit against a private individual, the ordinary conflict-of-laws rule would be applied, that rule should also be applied to the United States in order to give effect to the requirement in Section 2674 that "the United States shall be liable * * * in the same manner and to the same extent as a private individual under like circumstances" (Resp. Br. 5). Although this reasoning would lead to the same result in the instant case as the government's view, to accept the airline's interpretation would be to ignore the explicit language of Section 1346(b) that the United States is to be liable "in accordance with the law of the place where the act or omission occurred," and to construe Section 1346(b) in manner directly opposite to the ordinary and spontaneous meaning of the language used in that section (see *supra*, pp. 10–11).

Moreover, if the United States and the airline were sued as joint tortfeasors in a federal district court of the state where the negligent act occurred, and if that state gave extra-territorial effect to its law governing liability (cf. *Caldwell* v. *Gore*, 175 La. 501, 143 So. 387; *Schmidt* v. *Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W. 2d 365, 71 Harv. L. Rev. 1351; *Burkett* v. *Globe Indemnity Co.*, 182 Miss. 423, 181 So. 316), then the court, according to the *Erie* and *Klaxon* doctrine applicable in diversity cases, would look to the entire law of the state and apply that state's Wrongful Death Act extra-territorially to determine the airline's liability, whereas the court, according to the inflexible rule proposed by the airline, would look to the internal law of the state where the injury took effect to determine the liability of the United States under the Tort Claims Act. Under these circumstances, the United States would not be liable "in the same manner and to the same extent as a private individual under like circumstances."

3. In contrast to petitioners' and American Airlines' positions, the government's interpretation of the Tort Claims Act gives effect to the requirements of both Sections 1346(b) and 2674 and avoids the difficulties inherent in the positions of the petitioners and American Airlines. The government's position also avoids the difficult question raised by petitioners, *viz.*, whether, if the internal law of the place where the negligent act occurred is accepted as the controlling law, a federal court, enforcing a federal right, may ignore the territorial limitations of that law. It likewise circumvents another question

which is implicit in petitioners' position, *viz.*, whether, if the law of the place of the injury is accepted as the controlling law, a federal court, enforcing a federal right, may ignore the maximum recovery limitations of the law."

III

UNDER OKLAHOMA LAW, PETITIONERS ARE BARRED FROM ASSERTING THEIR CLAIMS UNDER THE OKLAHOMA WRONGFUL DEATH ACT BUT ARE ALLOWED TO ASSERT THEIR CLAIMS UNDER THE MISSOURI WRONGFUL DEATH ACT UNDER WHICH THEY HAVE ALREADY RECEIVED FULL SATISFACTION OF THEIR LEGAL CLAIMS

There is no dispute here, as there was none in the courts below, as to the pertinent facts: the "act or omission" of the United States, on which liability is predicated, is asserted to have occurred in Oklahoma (R. 6–7); the crash of the American Airlines plane, which injured and killed petitioners' decedents, occurred in Missouri (R. 7); and the petitioners in each case have been paid $15,000, the maximum amount recoverable under the Missouri Wrongful Death Act (Mo. Ann. Stat. 537.090, R.S., Sec. 3654 (1939), App., *infra*, pp. 31–32) (R. 30–33). The question is whether petitioners' complaints state claims for additional damages upon which relief can be granted against the United States under the Federal Tort Claims Act.

" In *Kilberg* v. *Northeast Airlines, Inc.*, Docket No. 222, New York Court of Appeals, the New York court recently applied the Massachusetts Wrongful Death Statute but refused to give effect to the limitations of liability imposed by that statute.

1. According to Oklahoma law, "[a]n action for wrongful death is based on the statute of the place where the injury occurred that caused the death" (*Gochenour* v. *St. Louis-San Francisco Ry.*, 205 Okla. 594, 597, 239 P. 2d 769, 772)—in this case, the law of Missouri. Under Missouri law, the Missouri Wrongful Death Act (Mo. Ann. Stat. 537.080, R.S., Sec. 3653 (1939), App., *infra*, p. 31) is the only basis for recovery. See, *e.g.*, *Plaza Express Co.* v. *Galloway*, 365 Mo. 166, 280 S.W. 2d 17. The maximum recovery then allowable under the Missouri law was $15,000 (Mo. Ann. Stat. 537.090, R.S., Sec. 3654 (1939)),[18] regardless of how many tortfeasors had a part in causing the wrongful death (see, *e.g.*, *Myers* v. *Kennedy*, 306 Mo. 268, 267 S.W. 810; *Hubbard* v. *St. Louis & M.R.R. Co.*, 173 Mo. 249, 72 S.W. 1073). Since in the present case it is conceded that petitioners have each received $15,000 from American Airlines (R. 30-33; see the Statement, *supra*, p. 3), petitioners have received full satisfaction for their legal claims under the Missouri statute.

2. Furthermore, Oklahoma provides no alternative conflict-of-laws rule by which it gives extra-territorial effect to its own Wrongful Death Act in cases in which the alleged negligent act occurs within its own borders, but the injury which causes death occurs outside the state. The Oklahoma Wrongful Death Act (12 Okla. Stat. Ann. 1053 (Supp. 1960), App., *infra*, pp.

[18] Subsequent to the incident here in dispute, the maximum amount recoverable under the Missouri Wrongful Death Act was raised prospectively to $25,000. Mo. Ann. Stat. 537.090, R.S., Sec. 3654 (Supp. 1960).

30–31) provides a remedy for wrongful death only if the *injury* which caused the death occurred within the borders of Oklahoma. See *Gochenour* v. *St. Louis-San Francisco Ry., supra; Fenton* v. *Sinclair Refining Co.*, 206 Okla. 19, 240 P. 2d 748. Since, in the present case, the injuries which caused the deaths occurred in Missouri, Oklahoma law precludes petitioners from recovery under the Oklahoma Wrongful Death Act. The courts below were therefore correct in holding that, in accordance with Oklahoma law, petitioners had failed to state claims upon which relief could be granted.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted.

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APPENDIX

FEDERAL TORT CLAIMS ACT

28 U.S.C. 1346(b) provides as follows:

> Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 1402(b) provides as follows:

> Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

28 U.S.C. (Supp. II) 2672 provides, in pertinent part, as follows:

> The head of each federal agency, or his designee for the purpose, acting on behalf of the United States, may consider, ascertain, adjust,

determine, and settle any claim for money damages of $2,500 or less against the United States accruing on and after January 1, 1945, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

* * * * *

28 U.S.C. 2674 provides as follows:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

OKLAHOMA WRONGFUL DEATH ACT

12 Okla. Stat. Ann. 1053 (Supp. 1960), provides as follows:

DEATH—ACTION FOR

When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may main-

tain an action therefor against the latter, or his personal representative if he is also deceased, if the former might have maintained an action had he lived, against the latter, or his representative, for an injury for the same act or omission. The action must be commenced within two years. The damages must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin; to be distributed in the same manner as personal property of the deceased.

Missouri Wrongful Death Act

Mo. Ann. Stat. 537.080, R.S., Sec. 3653 (1939), provided prior to August 29, 1955, as follows:

LIABILITY FOR WRONGFUL DEATH GENERALLY

Whenever the death of a person shall be caused by a wrongful act, neglect or default of another, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

Mo. Ann. Stat. 537.090, R.S., Sec. 3654 (1939), provided prior to August 29, 1955, as follows:

DAMAGES FOR WRONGFUL DEATH, BY WHOM RECOVERABLE—AMOUNT

Damages accruing under section 537.080 shall be sued for and recovered by the same parties and in the same manner as provided in section 537.070; and in every such action

the jury may give such damages, not exceeding fifteen thousand dollars, as they may deem fair and just, with reference to the necessary injury resulting from such death, to the surviving parties who may be entitled to sue, and also having regard to the mitigating and aggravating circumstances attending such wrongful act, neglect or default.

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